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C O N F I D E N T I A L SECTION 01 OF 02 SARAJEVO 001547

SIPDIS

DEPARTMENT FOR EUR(JONES),  
EUR/SCE(HYLAND/SILBERSTEIN/STINCHOMB); NSC FOR  
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SUBJECT: BOSNIA - DODIK RENEGES ON PROMISE TO COOPERATE  
WITH STATE-LEVEL LAW ENFORCEMENT AND JUDICIAL INSTITUTIONS

REF: A. SARAJEVO 1536

1B. SARAJEVO 1530

1C. SARAJEVO 1519

Classified By: Ambassador Charles L. English. Reasons 1.4(b), (d)

11. (C) SUMMARY: After promising publicly on September 28 that the Republika Srpska Government (RSG) would cooperate with state-level law enforcement institutions, RS PM Milorad Dodik informed the State Prosecutor's Office on September 30 that his government would not submit documentation requested by it unless certain conditions were met. Dodik reiterated earlier demands that the State Prosecutor must first submit to the RSG the names of those under investigation, their alleged criminal offenses, and proof that the State Court "undoubtedly has the jurisdiction" in this case. Dodik argued that a BiH Constitutional Court decision temporarily halting an investigation by the State Prosecutor of Herzegovina-Neretva cantonal officials lent legal weight to RS claims that the State Prosecutor was acting outside its jurisdiction. Dodik also claimed that the State Prosecutor's conduct violated Article Six of European Convention of Human Rights (i.e. the right to a fair trial). Finally, Dodik implied that RSG cooperation would undermine the rule of law in Bosnia. Lawyers at the State Prosecutor's Office reiterated to us that there is no basis in Bosnian jurisprudence for the RSG to challenge jurisdiction until an indictment has been filed. Dodik's letter takes us back to September 25 when the RSG mounted a fundamental challenge to the state-level law enforcement and judicial institutions. The State Prosecutor's Office told us that it plans to apply for a "temporary seizure order," which would allow SIPA to seize the required documents, but will not do so until after the elections. The confrontation between the RS and the state will likely come to a head when SIPA acts on that order, assuming the State Court grants it. END SUMMARY

Dodik Reneges on September 28 Promise

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12. (C) The RSG's September 28 statement acknowledging its intent to send documentation requested by State Investigation and Protection Agency (SIPA) and the State Prosecutor's Office promised to defuse the crisis over RS refusal to recognize the jurisdiction of state-level law enforcement and judicial institutions (Ref A). (Note: HighRep Lajcak reported to the Ambassador even before the RSG statement that Dodik had made a private commitment that the RS would unconditionally cooperate with SIPA. End Note) However, on September 30, RS PM Dodik sent a letter to the State

Prosecutor making clear his government would cooperate only if certain conditions were met. Dodik reiterated elements from his September 19 letter requesting from the State Prosecutor (Ref C): 1) names of the individuals being investigated; 2) descriptions of the offenses with which they are charged; and, 3) acts "from which the elements of the criminal offense ensue." Dodik also demanded proof that the State Court "undoubtedly" has the jurisdiction to act on the criminal reports that prompted the investigation. Dodik even suggested that RSG compliance with the SIPA request would jeopardize the rule of law in Bosnia, arguing that complying "would create an environment of legal uncertainty, anarchy, and subjective actions by the authorities at all levels, which is absolutely impermissible."

#### Shifting Legal Arguments: Same Outcome

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¶3. (C) Dodik offered several legal arguments to bolster the claim that his government was within its rights to refuse to cooperate with SIPA and the State Prosecutor's Office. He implied that RSG actions were legally consistent with a recent Constitutional Court decision temporarily halting an investigation by the State Prosecutor's Office into alleged corruption by political figure and police officials in Herzegovina-Neretva Canton (HNC). (Note: The defendants in the HNC case, political figures and police officials from the canton, challenged the State Court's jurisdiction over the matter. The Constitutional Court has not yet ruled on the substance of the appeal, but granted the defendants request for interim measures, in this case a stay in the proceedings,

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until it did so. This was the first time, as far as the State Prosecutor's Office was aware, that Constitutional Court had sought to review a jurisdictional matter prior to the delivery of a second instance verdict. The HNC ruling, in and of itself, was an unwelcome development from the perspective of the State Prosecutor's Office, which believes that Dodik interpreted the HNC ruling as signaling that the Constitutional Court would consider his arguments favorably, if he was able to secure its consideration of the case prior to an indictment. End Note) Dodik also claimed that the actions of the State Prosecutor's Office "constitutes a clear violation of Article six of the European Convention on Human Rights" (i.e., the right to a fair trial).

#### Reaction of State Prosecutor's Office

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¶4. (C) Lawyers at the State Prosecutor's Office confirmed that under Bosnia's Criminal Procedure Code (CPC) the RS has no right to demand to know who was being investigated or what the investigation was about. Furthermore, they reiterated that there was no precedent under Bosnian jurisprudence for the RSG to challenge the State Prosecutor's jurisdiction before an indictment was actually filed (though Dodik may be hoping to change that). The State Prosecutor's Office also observed that RS claims about the case were often inconsistent. For example, the RS has asserted that it has jurisdiction over the matter being investigated while at other times it has claimed that it has no idea what the investigation is about and has a right to details about who and what was being investigated. Nonetheless, though the RS refusal to comply with the request from SIPA and the State Prosecutor's Office raised profound questions about the RS's commitment to the rule of law, the refusal to turn over the requested documents did not, thus far, constitute a breach of Bosnian law. That would occur if the RS refused to allow SIPA to serve a temporary seize order, the next step in the legal process, the State Prosecutor's Office explained. The State Prosecutor's office told us that it would seek such an order (under Article 65 of the CPC), but only after the October 5 municipal elections. Finally, the State Prosecutor's Office told us that Acting Chief Prosecutor Barasin was under considerable pressure to drop the matter,

and that he and his family had received death threats related to the case.

Comment

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¶5. (C) It is difficult to predict how this confrontation between the RS and state-level law enforcement and judicial institutions will play itself out. Given the September 26 failure of the Steering Board Ambassadors to come up with a response to the RSG challenge, we do not anticipate OHR will be able to effectively intervene. If the State Prosecutor's Office obtains a temporary seizure order, it will have the legal right to send SIPA to the RSG to obtain the documentation, by force if necessary. This could provoke a confrontation in Banja Luka between the RS police and SIPA, something the State Prosecutor's Office stressed to us that they would do "everything in (their) power to avoid. However, should the RS succeed in blocking the investigation, it would severely undercut, if not eliminate altogether, the ability of state-level law enforcement and judicial institutions to operate effectively in the RS.

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